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IN THE UNITED STATES DISTRICT COURT  
THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

DAVID A. STEBBINS,

Case No. 4:21-cv-04184-JSW

Plaintiff,

**CORPORATE DEFENDANTS' JOINT  
NOTICE OF MOTION AND MOTION  
TO DISMISS**

v.

KARL POLANO, et al.,

Date: May 27, 2022

Defendants.

Time: 9:00 a.m.

Dept.: Courtroom 5

Action Filed: June 2, 2021

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS:**

2 **PLEASE TAKE NOTICE** that on May 27, 2022, at 9:00 a.m., or as soon thereafter as the  
3 matter may be heard, in the United States District Court, Northern District of California, Oakland  
4 Courthouse, Courtroom 5 – 2<sup>nd</sup> Floor, located at 1301 Clay Street, Oakland, California 94612,  
5 before the Honorable Jeffrey S. White, Amazon.com, Inc. (“Amazon”), Alphabet Inc.  
6 (“Alphabet”), and Discord Inc. (“Discord”) (collectively, the “Corporate Defendants”) will and  
7 hereby do move the Court for an order dismissing Plaintiff David A. Stebbins’ claims with  
8 prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6). This Motion is based on this  
9 Notice of Motion, the concurrently filed Memorandum of Points and Authorities, the concurrently-  
10 filed Request For Judicial Notice and accompanying Exhibits (“RJN”), all other matters of which  
11 this Court may take judicial notice, the pleadings, files, and records in this action, and on such  
12 other argument as may be heard by this Court.

13

14 Dated: April 11, 2022

Respectfully submitted,

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## I. INTRODUCTION

2 Plaintiff David Stebbins, a recognized “vexatious” litigant (*Stebbins v. Stebbins*, 2013  
3 U.S. Dist. LEXIS 93528 (W.D. Ark. July 3, 2013)), has asserted copyright infringement claims  
4 alleging that a handful of Individual Defendants posted infringing content on YouTube, Twitch,  
5 and Discord. Rather than simply sue the persons who posted that content, he also asks this Court  
6 to enter a needless and improper injunction under the Digital Millennium Copyright Act  
7 (“DMCA”) that would require the service providers – or their parent companies Amazon (of  
8 Twitch) and Alphabet (of YouTube) – to “permanently terminate” the “individuals’ accounts”  
9 and “not permit” them “to create any new accounts for any reason.” Dkt. 55 (SAC) ¶ 126. The  
10 Court should dismiss Mr. Stebbins’s claims against all Corporate Defendants with prejudice, and  
11 warn Mr. Stebbins that continued frivolous filings could result in sanctions.

12        *First*, the sole work at issue in this case – a video of Mr. Stebbins that was recorded  
13 accidentally through a fixed camera – is not copyrightable to begin with. Copyright protection  
14 subsists in creative works of authorship that are fixed in a tangible medium of expression by a  
15 human author. But here, Mr. Stebbins admits that the video was created by accident, without his  
16 knowledge, and without the slightest spark of creativity on his part. The fixation of the video  
17 itself was done by computer software – not a human author – without Mr. Stebbins even  
18 realizing the camera had turned on. Because such a work cannot be copyrightable, all of Mr.  
19 Stebbins’s infringement claims should be dismissed without needing to go further.

20        **Second**, even if the video at issue were copyrightable, Mr. Stebbins has not stated (and  
21 cannot state) an actual legal claim against any of the Corporate Defendants. Mr. Stebbins asks  
22 for a remedy – an injunction – but fails to accompany it with a viable cause of action upon which  
23 a request for relief could be granted as to those Defendants. As a result, his “claim” for  
24 injunctive relief fails as a matter of law. *See, e.g., Fortaleza v. PNC Fin. Servs. Grp., Inc.*, 642  
25 F. Supp. 2d 1012, 1028 (N.D. Cal. 2009) (dismissing “claim” for injunctive relief and explaining  
26 that “[a] request for injunctive relief by itself [] does not state a cause of action”). Even with an  
27 amendment, Mr. Stebbins cannot state such a claim because the DMCA does not authorize  
28 injunctions against innocent defendants who have not infringed in the first place. The statute is a

1 *limitation* on the remedies that can be sought against *infringing* online service providers, not an  
 2 independent expansion of power to issue no-fault injunctions.

3 **Third**, where, as here, the Corporate Defendants are already removing all instances of the  
 4 allegedly infringed work in suit when given DMCA-compliant notice, courts agree that it is  
 5 improper and unnecessary for an injunction to issue under that statute.

6 **Fourth**, absent exceptional circumstances, corporate parents are not liable for the conduct  
 7 of their subsidiaries, requiring dismissal of Amazon and Alphabet. *See, e.g., United States v.*  
 8 *Bestfoods*, 524 U.S. 51, 61 (1998). Mr. Stebbins admits that neither Amazon nor Alphabet has  
 9 engaged in any wrongful conduct, and he has advanced no allegation that those parent companies  
 10 are alter egos of their subsidiaries. Instead, he claims he “wants to keep [his] options open” in  
 11 the event, at some point, he develops a claim against them. Dkt. 71 ¶ 6. That is not how  
 12 litigation works. For this reason alone, the Court should dismiss Amazon and Alphabet.

13 Any dismissal of the Corporate Defendants should be with prejudice and without leave to  
 14 amend as Mr. Stebbins cannot cure the defects in his complaint. And given his well-documented  
 15 history as a vexatious litigant, the Court should warn Mr. Stebbins that continued frivolous  
 16 litigation could result in sanctions, including awards of attorneys’ fees in favor of defendants  
 17 who are forced to respond to his endless filings.

## 18 II. RELEVANT FACTS

### 19 A. Mr. Stebbins is a Vexatious Litigant and his Suits Have Been Deemed Frivolous.

20 Mr. Stebbins, a self-proclaimed “Youtuber” and “Twitch Streamer,” goes by the online  
 21 alias “Acerthorn.” Dkt. 55 (SAC) ¶ 1. He is widely ridiculed by other users on those services, in  
 22 large part because of his years’-long abuse of the court system. Mr. Stebbins has bogged down  
 23 courts across the nation with frivolous lawsuits. In this District, for example, he sued Google to  
 24 confirm a purported “arbitration award” for half a trillion dollars, even though no arbitration  
 25 actually occurred. *Stebbins v. Google, Inc.*, 2011 U.S. Dist. LEXIS 125701 (N.D. Cal. Oct. 27,  
 26 2011) (dismissing *sua sponte* as “frivolous” and “clearly baseless”). There are many other suits  
 27 just like that one. *See Stebbins v. Texas*, 2011 U.S. Dist. LEXIS 146248, at \*8-9 (N.D. Tex. Oct.  
 28 24, 2011) (warning Mr. Stebbins could face monetary sanctions and/or that court would ban him

1 from filing further actions without prior approval); *Stebbins v. Steen*, 2013 U.S. Dist. LEXIS  
 2 117914, at \*5-6 (E.D. Ark. Aug. 20, 2013) (concluding his complaint was frivolous and failed to  
 3 state a claim); *Stebbins v. Stebbins*, 575 F. App'x 705 (8th Cir. 2014) (affirming dismissal and  
 4 noting it is “undisputed that Stebbins has proceeded *in forma pauperis* on at least sixteen  
 5 complaints [as of 2014] that proved meritless, and has filed numerous frivolous motions”);  
 6 *Stebbins v. Bradford*, 2013 U.S. Dist. LEXIS 94179, at \*7 (W.D. Ark. July 5, 2013) (dismissing  
 7 his complaint as frivolous), *aff'd*, 552 F. App'x 606 (8th Cir. 2014).

8       Mr. Stebbins has been reprimanded multiple times. One federal court noted that “time  
 9 spent dealing with Mr. Stebbins’s filings prevents the Court from addressing the genuine, vexing  
 10 problems that people trust the Court to resolve quickly and fairly.” *Stebbins v. Microsoft, Inc.*,  
 11 2012 WL 12896360, at \*1 (W.D. Wash. Jan. 13, 2012), *aff'd sub nom. Stebbins v. Microsoft*  
 12 *Corp.*, 520 F. App'x 589 (9th Cir. 2013). Similarly, the Western District of Arkansas declared  
 13 him a “vexatious” litigant who has “abused the system” with “a history of filing ultimately  
 14 meritless cases upon which the Court has been forced to expend countless hours of time and  
 15 judicial resources. Not only has Mr. Stebbins filed numerous cases, but he has also filed over  
 16 one hundred motions within those cases, some of which have been repetitive, and few of which  
 17 have had any merit.” *Stebbins v. Stebbins*, 2013 U.S. Dist. LEXIS 93528, at \*3-4. When that  
 18 court limited him to filing one case per every three months (*id.* at \*8-9), he evaded the order by  
 19 suing in the *Eastern* District, and then attempting to transfer to the Western District. *Stebbins v.*  
 20 *Hixson*, 2018 U.S. Dist. LEXIS 79361, at \*3-4, \*7-8 (W.D. Ark. May 8, 2018).

21       Mr. Stebbins’s conduct has continued in this case and in other lawsuits pending before  
 22 this Court. In this case alone there are already over 125 docket entries, including dozens of  
 23 “motions” filed by him. The Court has denied the vast majority of them. Mr. Stebbins has also  
 24 filed a related action in this Court, *Stebbins v. Rebolo*, No. 4:21-cv-04184-JSW, and recently  
 25 amended his complaint. In that case Mr. Stebbins complains that YouTube declined to remove  
 26 fair use videos critiquing his litigious behavior.<sup>1</sup>

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27       <sup>1</sup> One such video at issue in the related *Rebolo* suit, entitled “Acerthorn: Serial DMCA Abuse  
 28 Controversy,” can be found at <https://www.youtube.com/watch?v=WB-Xd1qDKIY>. This is the  
 same video that Plaintiff attempted to enjoin in his Second Motion for Preliminary Injunction in

1       **B. This is a Dispute Between Mr. Stebbins and the Individual Defendants.**

2       According to Mr. Stebbins, on April 10, 2021, his “livestream software turned on of its  
 3 own accord without me realizing it. It stayed on for nearly two hours before I realized it was on  
 4 and closed it down. During this accidental livestream, my viewers were able to see me engaging  
 5 in mundane, daily activities,” and were able to hear “strange noises” that he “did not cause.”  
 6 Dkt. 55 (SAC) ¶¶ 22-23. He allegedly registered this “Accidental Livestream” with the U.S.  
 7 Copyright Office and uploaded the archive to his YouTube channel, where access is limited to  
 8 those who pay \$20 per month, which no one has ever paid. *Id.* ¶¶ 24-25. Mr. Stebbins’s claims  
 9 against the Individual Defendants stem from their alleged posting of the Accidental Livestream  
 10 and harassing comments on various social media platforms.

11       Mr. Stebbins does not allege that he or any of the Individual Defendants have accounts  
 12 with Amazon or Alphabet, or that any party posted allegedly infringing content (including the  
 13 Accidental Livestream) on Amazon’s or Alphabet’s websites (indeed, both are merely holding  
 14 companies and do not operate any content-hosting website at all). The only link between Mr.  
 15 Stebbins and Amazon is Mr. Stebbins’s assertion that Amazon is the “parent company of the  
 16 website Twitch.tv.” *Id.* ¶ 6. Although Mr. Stebbins has not named Twitch as a defendant in this  
 17 lawsuit, his claim against Amazon is based on his allegation that one of the Individual  
 18 Defendants, Karl Polano, shared his Accidental Livestream on Twitch without authorization. *Id.*  
 19 ¶ 60. Similarly, Alphabet’s only connection to this lawsuit is that it is the parent company of  
 20 Google LLC, which in turn is the parent company of YouTube. *Id.* ¶ 3.

21       As to the websites that actually hosted the allegedly infringing content, Mr. Stebbins  
 22 acknowledges there is a functioning system in place for dealing with all of that material. He  
 23 followed this process, submitting a DMCA takedown request to Twitch and, as he concedes, less

24 \_\_\_\_\_  
 25 this case, which the Court denied. *See* Dkt. 106-2 ¶¶ 6-7. The video also features prominently in  
 26 Mr. Stebbins’s Motion for Default Judgment against the Individual Defendants as a measure of  
 27 his damages (which makes no sense, since the video was not created or posted by the Individual  
 28 Defendants in default). *See* Dkt. 127-20 ¶¶ 38-49; Dkt. 247-18. The video provides a detailed  
 history of Mr. Stebbins’s abuse of the Court system and the DMCA to strike videos that fairly  
 criticize him. Mr. Stebbins immediately sued YouTube in the *Rebolo* action even though the  
 video (and others alleged in that complaint) is plainly fair use criticism.

1 than two hours later Twitch took down the video. *Id.* ¶ 60. Similarly, Mr. Stebbins concedes  
2 that YouTube promptly removed all alleged instances of the Accidental Livestream from its  
3 platform, often within hours of him submitting a takedown notice. *Id.* ¶¶ 26, 29, 46, 61. Nor  
4 does he allege that Discord ignored any of his takedown notices. *Id.* ¶ 44. Indeed, Mr. Stebbins  
5 admits that Alphabet, Discord, Amazon, and/or their subsidiaries “have complied with the  
6 DMCA’s safe harbor provisions.” *Id.* ¶ 124. Despite all that, he seeks injunctive relief requiring  
7 the sites to permanently ban the Individual Defendants. *Id.* ¶¶ 124-126.

### III. LEGAL STANDARD

9        The Court should grant a motion to dismiss when a plaintiff fails to allege “enough facts  
10 to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,  
11 570 (2007). “Threadbare recitals of the elements of a cause of action, supported by mere  
12 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing  
13 *Twombly*, 550 U.S. at 555). This standard applies equally to *pro se* plaintiffs. *See, e.g., Richards*  
14 *v. Harper*, 864 F.2d 85, 88 (9th Cir. 1988).

15 Moreover, the Court should be mindful that Mr. Stebbins is proceeding *in forma pauperis*  
16 and therefore, if his complaint lacks an arguable basis either in law ***or in fact***, the Court has “the  
17 unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims  
18 whose factual contentions are clearly baseless.” *Stebbins v. Google, Inc.*, 2011 U.S. Dist. LEXIS  
19 125701, at \*10-11. The *in forma pauperis* process “is designed largely to discourage the filing  
20 of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants  
21 generally do not initiate because of the costs of bringing suit.” *Neitzke v. Williams*, 490 U.S.  
22 319, 327 (1989). That concern is particularly acute here, given Mr. Stebbins’s history.

#### IV. LEGAL ARGUMENT

## 24 A. The Accidental Livestream is Not Copyrightable.

25 Mr. Stebbins's complaint fails from the get-go because the Accidental Livestream is not  
26 copyrightable. The Court need go no further to dispose of this entire litigation.

27 While Mr. Stebbins did register the video, “[t]he presumption of the validity of a  
28 registered copy-right may be overcome by the offer [of] some evidence or proof to dispute or

1 deny the plaintiff’s *prima facie* case of infringement.” *Lamps Plus, Inc. v. Seattle Lighting*  
 2 *Fixture Co.*, 345 F.3d 1140, 1145 (9th Cir. 2003) (citation omitted). Here, that proof is found in  
 3 the complaint itself, in which Mr. Stebbins admits that the Accidental Livestream lacks even the  
 4 slightest modicum of creativity, and is not a product of human authorship. Mr. Stebbins did **not**  
 5 disclose these facts in his application to the Copyright Office – a fact he concedes in his recent  
 6 Motion for Default Judgment. RJN, Ex. A; *see also* Dkt. 127-19 ¶ 3.

7 “Copyright protection subsists … in original works of authorship fixed in any tangible  
 8 medium of expression ....” 17 U.S.C. § 102(a). “The *sine qua non* of copyright is originality.  
 9 To qualify for copyright protection, a work must be original to the author. Original, as the term  
 10 is used in copyright, means … that it possesses at least some minimal degree of creativity.”  
 11 *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991) (citation omitted). “To be  
 12 sure, the requisite level of creativity is extremely low,” but the work must at least possess “some  
 13 creative spark” to be copyrightable. *Id.* Moreover, the “fixing” of a creative work in a tangible  
 14 medium of expression must be done “by or under the authority of the author.” 17 U.S.C. § 101.  
 15 That author must be a human, not a machine. Compendium of U.S. Copyright Office Practices  
 16 § 313.2 (“works produced by a machine or mere mechanical process that operates randomly or  
 17 automatically without any creative input or intervention from a human author” are not  
 18 copyrightable)<sup>2</sup>; *cf. Naruto v. Slater*, 2016 U.S. Dist. LEXIS 11041 (N.D. Cal. Jan. 28, 2016),  
 19 *aff’d*, 888 F.3d 418 (9th Cir. 2018) (finding monkey cannot sue for infringement of a selfie it  
 20 took with a camera). These two requirements – creativity and human authorship – are consistent  
 21 with the Constitution, which calls upon Congress to protect the rights of “Authors” to “promote  
 22 the Progress of Science and useful Arts.” U.S. Const. Art. I, § 8, Cl. 8.

23 Here, Mr. Stebbins states in the SAC that the Accidental Livestream was created when  
 24 “my livestream software **turned on of its own accord without me realizing it.**” Dkt. 55 (SAC) ¶  
 25 22 (emphasis added). The software remained on for nearly two hours until he “realized it was  
 26 on,” at which point he turned it off. *Id.* During this time Mr. Stebbins could be seen doing  
 27

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28 <sup>2</sup> Available at <https://www.copyright.gov/comp3/chap300/ch300-copyrightable-authorship.pdf>.

1 “*mundane, daily activities*.” *Id.* (emphasis added). “[T]he only interesting and memorable part  
 2 of this otherwise boring and *contentless* livestream” were “strange noises” that Mr. Stebbins says  
 3 he “*did not cause*.” *Id.* ¶ 23 (emphasis added). Thus by his own admission, the video lacks even  
 4 the slightest creative spark necessary for it to be copyrightable. It shows nothing other than  
 5 “mundane, daily activities”; it is “boring and contentless”; and the only notable content consists  
 6 of sounds that he “did not cause.” Mr. Stebbins made no creative choices in generating this  
 7 content, whether in the form of directing the scenery or even turning on the stationary camera.  
 8 This is not a case where an author intends to create a work but catches something by  
 9 happenstance—such as a photographer who snaps a photo at the same time as a strike of  
 10 lightning, or a painter who slips while holding the brush. Rather, Mr. Stebbins admits that the  
 11 *very making* of the video was accidental and done entirely without his knowledge.

12 Not only that, the fixation of the work was performed by a machine, not a human author.  
 13 Mr. Stebbins admits that computer software – not him – “turned on [the livestream] of its own  
 14 accord without me realizing it.” He also concedes, in his Motion for Default Judgment, that the  
 15 “accidental” nature of his video would “invalidate its copyright [] if the streaming software  
 16 turned on, entirely of its own accord, without any human input (knowing or otherwise) causing it  
 17 to happen”—which is precisely what he alleges in the complaint. Dkt. 127-20 ¶ 42.

18 It is clear that Mr. Stebbins is claiming copyright in this video not because it reflects his  
 19 creative expression, but because he finds it embarrassing and wants to stop others from accessing  
 20 it. That is understandable, but it is not a proper invocation of the copyright laws.<sup>3</sup>

21 **B. Mr. Stebbins Has Not Stated an Actual Claim Against Any Corporate Defendant.**

22 **1. Injunctive Relief is Not a Claim or Cause of Action.**

23 Even if the Accidental Livestream were copyrightable, Mr. Stebbins has no legal basis  
 24 for roping the Corporate Defendants into this case. His sole “claim” against the Corporate  
 25 Defendants is “V-2” for “Injunctive Relief.” Dkt. 55 (SAC) ¶¶ 124-126. He asks the Court to

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26 <sup>3</sup> Mr. Stebbins claims that he offers the video for “at least” \$20 per month (\$240 per year), but no  
 27 one has ever paid for it. Dkt. 55 (SAC) ¶¶ 24-25. The complaint, and his litigation history,  
 28 strongly suggests that Plaintiff did this simply to manufacture a damages claim over a video that  
 has no actual value. *Id.* ¶ 131.

1 require the Corporate Defendants to terminate the Individual Defendants' accounts and to enjoin  
 2 them from allowing any of the Individual Defendants to "create any new accounts" in the future.  
 3 *Id.* ¶ 126. But "[a]n injunction is a **remedy**, not a separate claim or cause of action. A pleading  
 4 can ... request injunctive relief **in connection with a substantive claim**, but a separately pled  
 5 claim or cause of action for injunctive relief is inappropriate." *Jensen v. Quality Loan Serv.*  
 6 *Corp.*, 702 F. Supp. 2d 1183, 1201 (E.D. Cal. 2010) (emphasis added); *see also Fortaleza*, 642 F.  
 7 Supp. 2d at 1028 (dismissing "claim" for injunctive relief and explaining that "[a] request for  
 8 injunctive relief by itself [] does not state a cause of action"); *Rosal v. First Fed. Bank of Cal.*,  
 9 671 F. Supp. 2d 1111, 1136 (N.D. Cal. 2009) (same); *Mangindin v. Wash. Mut. Bank*, 637 F.  
 10 Supp. 2d 700, 709 (N.D. Cal. 2009) (injunctive relief not an independent cause of action);  
 11 *Actuate Corp. v. Fid. Nat'l Info. Servs., Inc.*, 2014 U.S. Dist. LEXIS 117513, at \*11 (N.D. Cal.  
 12 Aug. 21, 2014) (dismissing "claim" for injunctive relief); *Reynolds v. Apple Inc. et al.*, No. 3:19-  
 13 cv-05440-RS, slip. op. at 6 (N.D. Cal. Nov. 27, 2019) (same). The Corporate Defendants should  
 14 be dismissed on this basis alone.

15 **2. Plaintiff Cannot Advance a Substantive Claim to Support Injunctive Relief.**

16 Mr. Stebbins cannot advance a substantive claim of *prima facie* copyright infringement  
 17 against the Corporate Defendants that could support an injunction against them. This is because  
 18 Discord, Twitch, and YouTube immediately disabled all alleged infringements of the Accidental  
 19 Livestream as soon as the websites learned of those videos.

20 Copyright infringement falls into two categories: direct and secondary liability. "[D]irect  
 21 infringement requires the plaintiff to show causation (also referred to as 'volitional conduct') by  
 22 the defendant." *Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657, 666 (9th Cir. 2017). As  
 23 automated service providers that merely hosted content posted by the Individual Defendants,  
 24 Discord, Twitch, and YouTube cannot be liable under this theory because "passively storing  
 25 material at the direction of users in order to make that material available to other users upon  
 26 request, or automatically copying, storing, and transmitting materials upon instigation by others,"  
 27 is not "volitional" conduct; and thus, "does not render an [Internet service provider] strictly  
 28 liable for copyright infringement." *Id.* at 668-70 (brackets in original; citations omitted); *accord*,

1 *e.g., Religious Tech. Ctr. v. Netcom On-Line Commc'n Servs., Inc.*, 907 F. Supp. 1361, 1369  
 2 (N.D. Cal. 1995); *VHT, Inc. v. Zillow Grp., Inc.*, 918 F.3d 723, 731-38 (9th Cir. 2019).

3 Nor can the Corporate Defendants be liable for secondary infringement. Contributory  
 4 liability only exists if a service provider “has actual knowledge that specific infringing material  
 5 is available using its system, and can take simple measures to prevent further damage to  
 6 copyrighted works, *yet continues to provide access to infringing works.*” *Giganews*, 847 F.3d at  
 7 671 (citation omitted) (emphasis added); *accord, e.g., Luvdarts, LLC v. AT&T Mobility, LLC*,  
 8 710 F.3d 1068, 1071-72 (9th Cir. 2013); *Perfect 10, Inc. v. Visa Int'l Serv. Ass'n*, 494 F.3d 788,  
 9 801 (9th Cir. 2007); *Kifle v. YouTube LLC*, 2021 U.S. Dist. LEXIS 193604, at \*14-16 (N.D. Cal.  
 10 Oct. 5, 2021). Similarly, vicarious liability only exists when a platform “profit[s] from direct  
 11 infringement while *declining to exercise a right to stop or limit it.*” *MGM Studios Inc. v.*  
 12 *Grokster, Ltd.*, 545 U.S. 913, 930 (2005) (emphasis added); *accord, e.g., Luvdarts*, 710 F.3d at  
 13 1071. Mr. Stebbins concedes that Discord, Twitch, and YouTube did the opposite of these  
 14 things: as soon as they learned of the alleged infringements, the websites promptly took them  
 15 down. Dkt. 55 (SAC) ¶¶ 26, 29, 44, 46, 60, 61. As another federal court recently held in a  
 16 similar case against YouTube, that precludes any theory of *prima facie* infringement against the  
 17 websites, irrespective of whether they might also qualify for the DMCA safe harbor. *Bus.*  
 18 *Casual Holdings, LLC v. YouTube, LLC*, 2022 U.S. Dist. LEXIS 50166, at \*14-16 (S.D.N.Y.  
 19 Mar. 21, 2022) (dismissing contributory and vicarious claims where plaintiff conceded that  
 20 YouTube promptly removed the infringing videos); *see also id.* at \*7-11 (also dismissing direct  
 21 infringement claims for lack of volitional conduct).

22 **3. The DMCA Does Not Authorize Injunctive Relief Against Non-Infringers.**

23 Mr. Stebbins relies on 17 U.S.C. § 512(j) as a basis for seeking a standalone injunction  
 24 without a supporting claim. Section 512(j), however, is a *limit* on the Court’s power to enjoin,  
 25 not an expansion. The DMCA presupposes that the enjoined service providers are *prima facie*  
 26 infringers who sought refuge from monetary liability under the safe harbor. By its plain terms,  
 27 17 U.S.C. § 512(j) places constraints on injunctions against infringing service providers who are  
 28 “not subject to monetary remedies *under this section*” (emphasis added).

1        In other words, the DMCA is a limitation-of-liability provision that restricts the remedies  
 2 that can be sought against platforms “after it is determined whether they are infringers in the first  
 3 place under the preexisting Copyright Act.” *Tur v. YouTube, Inc.*, 2007 U.S. Dist. LEXIS 50254,  
 4 at \*6-7 (C.D. Cal. June 20, 2007) (citation omitted); *see also Corbis Corp. v. Amazon.com, Inc.*,  
 5 351 F. Supp. 2d 1090, 1099 (W.D. Wash. 2004) (Section 512(j) injunctions are available “if a  
 6 plaintiff can show that a safe harbor-eligible service provider has violated her copyright”),  
 7 *overruled on other grounds by Cosmetic Ideas, Inc. v. IAC/Interactivecorp.*, 606 F.3d 612 (9th  
 8 Cir. 2010), *abrogated by Fourth Est. Pub. Benefit Corp. v. Wall-Street.com*, 139 S. Ct. 881  
 9 (2019). Thus if a plaintiff “seeks injunctive relief under [Section 512(j)], the Court must still  
 10 consider the question of ultimate liability for direct and vicarious copyright infringement.”  
 11 *Totally Her Media, LLC v. BWP Media United States, Inc.*, 2015 U.S. Dist. LEXIS 193685, at  
 12 \*33-34 (C.D. Cal. Mar. 24, 2015). The statute does not authorize relief against innocent  
 13 platforms who are not “infringers in the first place” (*Tur*, 2007 U.S. Dist. LEXIS 50254, at \*6-7),  
 14 and therefore cannot be enjoined under existing principles of law.

15        This is confirmed by the DMCA’s legislative history, which makes clear that Section  
 16 512(j) “defines the terms and conditions under which an injunction may be issued against a  
 17 service provider that qualifies for the limitations of liability [in the safe harbor provisions] **but is**  
 18 **otherwise subject to an injunction under existing principles of law.**” S. Rep. No. 105-190, at  
 19 52-53 (emphasis added); *see also* H.R. Rep. No. 105-551, at 62 (same); *accord* 144 Cong. Rec.  
 20 E160 (daily ed. Feb. 12, 1998) (remarks of Rep. Coble) (“Copyright owners may still seek an  
 21 injunction against such activities under theories of secondary liability, **if they can establish the**  
 22 **necessary elements of a claim.**”) (emphasis added). This is also consistent with Federal Rule  
 23 65(d)(2), which limits injunctive relief only to parties, their agents, and “other persons who are in  
 24 active concert or participation with” them.

25        In *Totally Her Media*, for example, the court denied a copyright owner’s request for a  
 26 512(j) injunction against an online service provider because the provider was not liable for a  
 27 third-party’s infringement. 2015 U.S. Dist. LEXIS 193685, at \*37-38. And in *Business Casual*,  
 28 the plaintiff requested a similar injunction requiring YouTube to ban a user pursuant to the

1 DMCA's "repeat infringer" provision, even though YouTube had promptly removed all of the  
 2 user's infringing content and thus did not infringe. The court dismissed, in part because "[t]he  
 3 DMCA safe harbors provide potential defenses against copyright infringement claims where, but  
 4 for the safe harbors, the plaintiff has a meritorious cause of action against the defendant for  
 5 copyright infringement." 2022 U.S. Dist. LEXIS 50166, at \*13; *accord, e.g., Arista Records*  
 6 *LLC v. Usenet.com, Inc.*, 2008 U.S. Dist. LEXIS 95514, at \*12 (S.D.N.Y. Nov. 24, 2008) ("The  
 7 DMCA does not provide an affirmative cause of action," but rather "'limitations of liability ... if  
 8 the provider is found to be [already] liable *under existing principles of law.*'") (emphasis in  
 9 original; quoting *Ellison v. Robertson*, 357 F.3d 1072, 1076-77 (9th Cir. 2004)); *Perfect 10, Inc.*  
 10 *v. Amazon.com, Inc.*, 508 F.3d 1146, 1158 n.4 (9th Cir. 2007) ("[T]he DMCA does not change  
 11 copyright law; rather, Congress provided that [the DMCA's] limitations of liability apply if the  
 12 provider is found to be liable under existing principles of law.") (citing *Ellison*; cleaned up);  
 13 *Veoh Networks, Inc. v. UMG Recordings, Inc.*, 522 F. Supp. 2d 1265, 1271-72 (S.D. Cal. 2007)  
 14 ("[T]he safe harbor presupposes that a specific allegation of infringement has already been  
 15 levied."); *Io Grp., Inc. v. Veoh Networks, Inc.*, 586 F. Supp. 2d 1132, 1142 (N.D. Cal. 2008) (the  
 16 safe harbors limit liability of service providers to injunctive relief, but "do not affect the question  
 17 of ultimate liability under the various doctrines of direct, vicarious, and contributory liability");  
 18 *CoStar Grp., Inc. v. LoopNet, Inc.*, 373 F.3d 544, 555 (4th Cir. 2004) ("[T]he DMCA is  
 19 irrelevant to determining what constitutes a *prima facie* case of copyright infringement."); *see also* H.R. Conf. Rep. No. 105-796, at 73 (1998) ("[T]he limitations of liability [in 17 U.S.C.  
 20 § 512] apply if the provider is found to be liable under existing principles of law.").

22 Accordingly, Section 512(j) has no application here because the Corporate Defendants  
 23 did not infringe, and thus have no need to invoke the DMCA safe harbor. Mr. Stebbins cannot  
 24 seek an injunction in the absence of a substantive claim of infringement against them.

25 **C. The Requested Injunctive Relief is Improper.**

26 Mr. Stebbins's requested relief also fails on the merits. He appears to invoke Section  
 27 512(j)(1)(A)(ii), which authorizes a court to enter "[a]n order restraining the service provider  
 28 from providing access to a subscriber or account holder of the service provider's system or

1 network who is engaging in infringing activity and is identified in the order, by terminating the  
 2 accounts of the subscriber or account holder that are specified in the order.” For three  
 3 independent reasons, the Court should dismiss Mr. Stebbins’s request.

4 *First*, the relief Mr. Stebbins seeks does not conform with Section 512(j)’s plain  
 5 language. He asks the Court to order the Corporate Defendants to “permanently terminate the  
 6 individual Defendants’ accounts … and not permit … the three individual defendants to create  
 7 any new accounts for any reason.” Dkt. 55 (SAC) ¶ 126. Section 512(j)(1)(A)(ii) does not  
 8 permit this type of relief. While it allows the Court to require the website to terminate specific  
 9 accounts “that are specified in the order,” it does not allow for broad injunctive relief requiring  
 10 the website to forever bar an individual from opening other, unspecified accounts with the site in  
 11 the future. Thus, the requested injunctive relief is improper.<sup>4</sup>

12 *Second*, Section 512(j)(2) identifies four factors the Court must consider before granting  
 13 injunctive relief against the Corporate Defendants. Under these factors, Mr. Stebbins’s request  
 14 fails on the face of the complaint. Perhaps the most obvious example, the fourth factor, asks the  
 15 court to consider “[w]hether other less burdensome and comparably effective means of  
 16 preventing or restraining access to the infringing material are available.” 17 U.S.C.  
 17 § 512(j)(2)(D). As the complaint makes clear, there is a functioning system in place for dealing  
 18 with the allegedly infringing content: Discord, Twitch, and YouTube removed all instances of  
 19 the alleged infringement at issue almost immediately after they were notified of that content.  
 20 Dkt. 55 (SAC) ¶ 60 (Twitch removed after two hours); *id.* ¶¶ 26, 29, 46, 61 (YouTube removed  
 21 all infringements, often within hours); *id.* ¶ 44 (Discord removed all infringements). Given the  
 22 existence of this functioning system, injunctive relief is not necessary or appropriate: It is  
 23 “undisputed [Twitch, YouTube, and Discord] [are] already removing allegedly infringing works  
 24 when given DMCA-compliant notice so [] there is no need for an injunction requiring [them] to

25  
 26 <sup>4</sup> Moreover, it allows for this relief only *after* a showing that the user is engaging in “infringing  
 27 activity” on the website. Mr. Stebbins does not allege that the Individual Defendants “engaged  
 28 in infringing activity” on Amazon’s or Alphabet’s websites. Nor does Mr. Stebbins identify any  
 account belonging to the Individual Defendants on Amazon or Alphabet.

1 do the same.” *Wolk v. Kodak Imaging Network, Inc.*, 2011 U.S. Dist. LEXIS 27541, at \*19-21  
 2 (S.D.N.Y. Mar. 17, 2011) (denying request for injunction under 17 U.S.C. § 512(j)(1)(A)).

3 **Third**, setting aside the above factors, any request for relief is moot because, again, the  
 4 service providers removed the allegedly infringing content promptly after receiving Mr.  
 5 Stebbins’s DMCA notices. *E.g.*, Dkt. 55 (SAC) ¶¶ 26, 29, 44, 46, 60, 61, 124. In these  
 6 situations, a “request for injunctive relief” under Section 512(j) “is moot.” *Ventura Content, Ltd.*  
 7 v. *Motherless, Inc.*, 2013 U.S. Dist. LEXIS 189948, at \*49-50 (C.D. Cal. July 3, 2013), *aff’d*, 885  
 8 F.3d 597 (9th Cir. 2018); *see also Sid Avery & Assocs., Inc. v. Pixels.com, LLC*, 2021 U.S. Dist.  
 9 LEXIS 35620, at \*13 (C.D. Cal. Feb. 24, 2021) (“Because Pixels qualifies for safe harbor under  
 10 § 512(c), the only relief available to MVPT is the limited injunctive relief pursuant to § 512(j).  
 11 Once Pixels received notice of the infringing images through MPTV’s complaint, however,  
 12 Pixels treated the pleadings as takedown notices and immediately removed the images identified.  
 13 Accordingly, any injunctive relief to which MPTV would be entitled is now moot.”) (internal  
 14 citations omitted); *Io Grp.*, 586 F. Supp. 2d at 1154-55 (reaching same conclusion where  
 15 defendant who qualified for safe harbor had already removed all of the infringing content).  
 16 Fundamentally, because the Corporate Defendants (or their subsidiaries) “removed the infringing  
 17 content,” there “there is no injunctive relief to which Mr. [Stebbins] is entitled.” *Kinsley v.*  
 18 *Udemy, Inc.*, 2021 U.S. Dist. LEXIS 62885, at \*16-17 (N.D. Cal. Mar. 31, 2021).

19 In sum, the Court should dismiss Mr. Stebbins’s injunctive relief claim as baseless. *See*,  
 20 *e.g.*, *Stebbins v. Google, Inc.*, 2011 U.S. Dist. LEXIS 125701, at \*10-11 (where plaintiff is *in*  
 21 *forma pauperis*, judges possess “the unusual power to pierce the veil of the complaint’s factual  
 22 allegations” and to dismiss a complaint that lacks an arguable basis either in law or in fact).

23 **D. Mr. Stebbins Has Failed to State a Claim Against Amazon and Alphabet.**

24 In addition to failing to state a substantive claim, nowhere in any of Mr. Stebbins’s  
 25 complaints does he allege that Amazon or Alphabet have any connection to the Individual  
 26 Defendants or the allegedly infringing content. Instead, he named Amazon and Alphabet as  
 27 Defendants solely based on their alleged status as parent companies of Twitch and YouTube  
 28 respectively. Dkt. 55 (SAC) ¶¶ 3, 6. This is not enough: “It is a general principle of corporate

1 law deeply ingrained in our economic and legal systems that a parent corporation ... is not liable  
 2 for the acts of its subsidiaries.” *United States v. Bestfoods*, 524 U.S. 51, 61 (1998); *see also*  
 3 *Pantoja v. Countrywide Home Loans, Inc.*, 640 F. Supp. 2d 1177, 1192 (N.D. Cal. 2009) (“It is  
 4 the general rule that a parent corporation and its subsidiary will be treated as separate legal  
 5 entities.”); *Prudencio v. Midway Importing, Inc.*, 831 F. App’x 808, 810 (9th Cir. 2020) (“[I]t is  
 6 well established that a parent-subsidiary relationship by itself is insufficient to impute liability.”).

7       Mr. Stebbins acknowledges as much, explaining to the Court: “[A]ccording to my  
 8 research n (*sic*) the matter, there are some limited instances where a parent company can indeed  
 9 be held liable for the actions of its subsidiary ... I want to keep my options open ... just in the off  
 10 chance I may discover evidence during this case that makes them qualify for an exception.” Dkt.  
 11 71 ¶ 6. This is not a valid basis to sue Amazon and Alphabet. Courts routinely grant motions to  
 12 dismiss such claims against parent corporations with no involvement in the allegedly wrongful  
 13 conduct. *See, e.g., Canary v. Youngevity Int’l, Inc.*, 2019 U.S. Dist. LEXIS 46429, at \*11 (N.D.  
 14 Cal. Mar. 20, 2019) (dismissing parent corporation from lawsuit when allegedly wrongful  
 15 conduct was done by subsidiary); *Bastidas v. Good Samaritan Hosp.*, 2014 U.S. Dist. LEXIS  
 16 92772, at \*14-15 (N.D. Cal. July 7, 2014) (same); *Williby v. Hearst Corp.*, 2017 U.S. Dist.  
 17 LEXIS 106212, at \*4-6 (N.D. Cal. July 10, 2017) (same); *Escobar, Inc. v. Klarna, Inc.*, 2021  
 18 U.S. Dist. LEXIS 1443, at \*9-10 (C.D. Cal. Jan. 4, 2021) (same). Given Mr. Stebbins’s  
 19 admissions that (1) Amazon and Alphabet did not engage in any wrongdoing, and (2) their only  
 20 relationship to this lawsuit is their status as parent corporations, the Court should dismiss  
 21 Amazon and Alphabet from this case.<sup>5</sup>

22 **E. The Court Should Deny Any Request for Leave to Amend and Warn Mr. Stebbins  
 23 Against Further Frivolous Filings.**

24       Although courts have wide discretion in determining whether to grant leave to amend, a  
 25 court should deny leave when a proposed amendment would be futile. *See, e.g., Leadsinger, Inc.*  
 26 *v. BMG Music Publ’g*, 512 F.3d 522, 532 (9th Cir. 2008) (denying leave to amend based on

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27       <sup>5</sup> Even if the Court permits the pending amendments seeking to add Twitch and YouTube as  
 28 parties, Amazon and Alphabet still should be dismissed for the same reasons.

1 futility); *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004) (“Futility alone can justify the  
 2 denial of a motion to amend.”) (internal quotations and citation omitted). The sole work at issue  
 3 is not copyrightable. Moreover, Mr. Stebbins’s injunctive relief claim cannot be cured because it  
 4 is not, as a matter of law, an independent or cognizable claim. Nor is any injunctive relief even  
 5 necessary given his admissions that all instances of the Accidental Livestream have been  
 6 removed. Mr. Stebbins cannot walk back from those admissions in an amended pleading.  
 7 Additionally, Mr. Stebbins acknowledged that he does not have a claim against Amazon or  
 8 Alphabet but instead is continuing to name them in the lawsuit to “keep [his] options open.”  
 9 Dkt. 71 ¶ 6. Therefore, his “claims” against Amazon and Alphabet cannot be cured through  
 10 amendment, either. *See Williby*, 2017 U.S. Dist. LEXIS 106212, at \*4-6 (dismissing claims with  
 11 prejudice against a parent company based on actions of a subsidiary).

12 Further, this Court should warn Mr. Stebbins that it will issue sanctions if he continues to  
 13 file frivolous motions, amendments, and lawsuits. In this case alone he has made excessive and  
 14 repetitive filings, even before all the Individual Defendants had been served. This is just another  
 15 episode of his abuse of the court system. Courts are free to restrict vexatious litigants from  
 16 meritless filings and to impose sanctions on that basis. *See De Long v. Hennessey*, 912 F.2d  
 17 1144, 1147 (9th Cir. 1990). And courts regularly impose restrictions based on prolific motions  
 18 practice over repetitive or baseless arguments. *See, e.g., Ou-Young v. Roberts*, 2013 U.S. Dist.  
 19 LEXIS 179213, at \*27 (N.D. Cal. Dec. 20, 2013) (“[W]hile the number of filings here (five) does  
 20 not establish Plaintiff as vexatious *per se*, the patently meritless nature of his filings and motions  
 21 do.”); *Greenspan v. IAC/InterActiveCorp*, 2016 U.S. Dist. LEXIS 137204, at \*10 (N.D. Cal.  
 22 Sept. 30, 2016) (ordering vexatious litigant “to obtain leave of court before filing any further  
 23 motions in this case”). This Court should issue an order warning Mr. Stebbins that his frivolous  
 24 filings will not be tolerated. *Overton v. Uber Techs., Inc.*, 2019 U.S. Dist. LEXIS 161374, at \*12  
 25 (N.D. Cal. Sept. 20, 2019) (warning pro se plaintiffs “against filing additional motions”).

## 26 V. CONCLUSION

27 For the foregoing reasons, the Corporate Defendants respectfully request that the Court  
 28 dismiss Mr. Stebbins’s claims against them with prejudice.

1 Dated: April 11, 2022

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## **SIGNATURE ATTESTATION**

I hereby attest that all signatories listed above, on whose behalf this motion is submitted, concur in the filing's content and have authorized the filing.

DATED: April 11, 2022

DAVIS WRIGHT TREMAINE LLP

By /s/ Sanjay M. Nangia  
Sanjay M. Nangia

Sanjay M. Nangia

Attorneys for Defendant

AMAZON.COM, INC.